

9ev. 02/2006

COURTROOM MINUTES OF CRIMINAL PROCEEDINGS  
Norfolk/Newport News Division

SENTENCING MINUTES

Set: 10:00 a.m.  
Started: 10:05 a.m.  
Ended: 11:45 a.m.

Date: December 5, 2013  
Judge: Mark S. Davis  
Court Reporter: Paul McManus  
U.S. Attorney: Joe Kosky / Ken Nelson  
Defense Counsel: Michael Chalos / T. Keltz  
Courtroom Deputy: Valerie Ward  
Probation Officer: Jeff Hottel  
Interpreter: Zafiroa Bourguignon  
Rep:

Case No. 2:13cr40-1Defendant: Diana Shipping Services, S.A. ( ) in custody ( ) on bond

☒ Came on for disposition. ☒ Deft. <sup>corp. Rep.</sup> sworn.  
\_\_\_\_ Govt/Deft's \_\_\_\_ motion for downward departure.  
\_\_\_\_ motion for one-level reduction in offense level.  
\_\_\_\_ Granted. \_\_\_\_ Denied.  
☒ The Court adopts the factual statements contained in the Presentence Report  
☒ Presentence Report reviewed. \_\_\_\_ Objections heard and rulings made.  
\_\_\_\_ Evidence presented. (Witnesses and exhibits listed on last page)  
☒ Arguments of counsel heard. ☒ Statement of deft. <sup>corp. Rep.</sup> heard.  
\_\_\_\_ The Court made a finding of GUILT as to Count(s) \_\_\_\_.

IMPRISONMENT:

SENTENCE: Counts 1-11: The deft. shall be committed to the custody of the BOP to be imprisoned for a total term of \_\_\_\_ months. The term consists of \_\_\_\_ months on count \_\_\_\_, a term of \_\_\_\_ months on count \_\_\_\_, a term of \_\_\_\_ months on count \_\_\_\_, and a term of \_\_\_\_ months on count \_\_\_\_, to be served concurrently/consecutively.

\_\_\_\_ The deft. is remanded to the custody of the U.S. Marshal.

\_\_\_\_ The deft. shall surrender for service of the sentence at the institution designated by the BOP/U.S. Marshal before \_\_\_\_ on \_\_\_\_, as notified by the U.S. Marshal.

\_\_\_\_ If deft. is unable to arrange transportation to the designated institution, the United States Marshal will arrange transportation for the defendant.

\_\_\_\_ If the defendant is not notified by the United States Marshal of the institution designated, the defendant shall report to the United States Marshal at 600 Granby Street, Norfolk, VA, by \_\_\_\_ on \_\_\_\_, to begin service of the sentence.

PROBATION:

☒ The deft. <sup>corp.</sup> shall be placed on probation for a term of 3 years 6 mos.

SUPERVISED RELEASE:

\_\_\_\_ Upon release from imprisonment, the deft. shall be on supervised release for a term of \_\_\_\_ year(s). This term consists of \_\_\_\_ years on count \_\_\_\_, a term of \_\_\_\_ years on count \_\_\_\_, and a term of \_\_\_\_ years on count \_\_\_\_, all to run concurrently.

Standard Conditions of Supervised/Probation:

- (1) The defendant organization shall not commit another federal, state or local crime;
- (2) The defendant organization shall not commit another federal, state or local crime during the term of supervision;
- (3) Within thirty (30) days from the date of the judgment the defendant organization shall designate an official of the organization to act as the organization's representative and to be primary contact with the probation officer;
- (4) The defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (5) The defendant organization shall make periodic submissions to the probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received;
- (6) The defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- (7) The defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- (8) The defendant organization shall notify the probation officer within seventy-two (72) hours of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of bankruptcy proceeding, criminal prosecution, major civil litigation, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization;
- (9) The defendant organization shall not dissolve, change its name, or change the name under which it does business unless the judgment and all criminal monetary penalties imposed by this court are either fully satisfied or equally enforceable against the defendant's successors or assignees;
- (10) The defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.



✓ The defendant corporation shall be appointed a Court-Appointed Monitor (CAM). The parties are to jointly nominate a Court-Appointed Monitor for the Court's consideration, and this person will be provided a period of 30 to 60 days to review the EEMS that is already in place by Diana Shipping Services and the Government's proposed ECP that is provided as an exhibit to the Court here and to recommend to the Court which program or parts thereof should be required as a special condition of probation. Once the Court evaluates the recommendation of the cam, it will impose the recommendation as a special condition of probation, or elaborate on this special condition, and the CAM can then commence its periodic auditing of Diana Shipping Services vessels as it determines would be necessary to ascertain compliance and provide periodic reports of such audits to the Department of Probation here at the Court, to the Department of Justice through whoever Mr. Nelson designates, and the Coast Guard to the person so designated, to ensure or so designated by the Coast Guard through Mr. Nelson, to ensure that all parties have the necessary information to determine if Diana Shipping Service is in full compliance with the special condition of probation and all applicable U.S. and International Marine Environmental Laws and Regulations.

✓ The Court-Appointed Monitor (CAM) will have the ability to have any follow-up or additional inspections that the Court-Appointed Monitor (CAM) may deem appropriate.

✓ The defendant corporation shall maintain accurate sounding logs.

\_\_\_\_\_ The deft. shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

\_\_\_\_\_ The deft. shall provide the probation officer access to any requested financial information.

\_\_\_\_\_ The deft. shall participate in a program approved by the U.S. Probation Office for financial counseling. The cost of this program is to be paid by the defendant as directed by the probation officer.

\_\_\_\_\_ The defendant shall obtain a GED or a vocation skill during his period of supervision if not employed full-time.

\_\_\_\_\_ The deft. shall be on Home Detention, which shall include electronic monitoring at the deft's expense, for a period of \_\_\_\_\_ consecutive months/days. During this time, he/she shall remain at his/her place of residence except for employment and other activities approved in advance by the probation officer.

\_\_\_\_\_ Deft shall maintain a telephone at his place of residence without party lines, telephone answering machines, a modem, "call forwarding," "caller ID," "call waiting@, portable cordless telephones or any other devices or services that may interfere with the proper functioning of the electronic monitoring equipment for the above period. Deft shall wear an electronic monitoring device, follow electronic monitoring procedures, and pay the cost of electronic monitoring, all as directed by the probation officer.

\_\_\_\_\_ The defendant shall participate in a program approved by the United States Probation Office for mental health treatment, to include a psychological evaluation, and sex offender treatment. The costs of these programs are to be paid by the defendant



FINANCIAL PENALTIES

\_\_\_\_ Court finds deft. is unable to pay fine, cost of prosecution, cost of imprisonment or supervised release.

SPECIAL ASSESSMENT:

☒ As to count 1-11, the deft. shall pay a special assessment in the amount of \$400 on each count.

\_\_\_\_ As to count \_\_\_\_\_, the deft. shall pay a special assessment in the amount of \_\_\_\_\_.

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The total special assessment due is \$4,400 and shall be due in full immediately.

FINE:

☒ The deft. shall pay a fine in the amount of \$ 100,000.00 on each count.  
\$1,100,000.00

RESTITUTION:

\_\_\_\_ The deft. shall make restitution in the amount of \$\_\_\_\_\_.

\_\_\_\_ Restitution Judgment Order, entered and filed in open court.

SCHEDULE OF PAYMENTS:

\_\_\_\_ Interest will not accrue if the special assessment/fine/restitution is paid in accordance with the schedule, or any modified schedule, set by this court.

☒ The special assessment/fine/restitution is due and payable immediately. Any balance remaining unpaid on the special assessment/fine/restitution at the inception of supervision, shall be paid by the deft. in installments of not less than \$\_\_\_\_\_ per month, until paid in full. Said payments shall commence \_\_\_\_\_ days after deft's supervision begins.

\_\_\_\_ At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment/fine/restitution ordered and shall notify the court of any change that may need to be made to the payment schedule.

\_\_\_\_ Each restitution payment shall be divided proportionately among the payees named.

\_\_\_\_ Restitution shall be made jointly and severally with \_\_\_\_\_

✓ Nothing in the Court's order shall prohibit the collection of any judgment by the United States.

✓ Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Since this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

✓ The deft. shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

✓ The deft. <sup>conf.</sup> notified of right of appeal.

\_\_\_\_\_ Court noted that deft. waived right of appeal in plea agreement.

\_\_\_\_\_ On motion of gov't, remaining counts dismissed.

\_\_\_\_\_ The deft. is continued on present bond and cautioned re bail jumping.

\_\_\_\_\_ Court recommends incarceration at

\_\_\_\_\_ a facility as close to the Tidewater Virginia area as possible.

\_\_\_\_\_ a facility with a drug treatment program when and if defendant qualifies.

\_\_\_\_\_ Consent Order of Forfeiture, executed and filed in open court.

Additional Counts/Comments:

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